IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MEDTRONIC AVE, INC., and MEDTRONIC USA, INC. Plaintiffs, v. ADVANCED CARDIOVASCULAR SYSTEMS, INC., and GUIDANT SALES CORPORATION Defendants.	Civil Action No. 98-80-SLR

ANSWER AND COUNTERCLAIM OF ADVANCED CARDIOVASCULAR SYSTEMS, INC. AND GUIDANT SALES CORPORATION TO AMENDED AND SUPPLEMENTAL COMPLAINT OF MEDTRONIC AVE, INC. AND MEDTRONIC USA, INC.

Advanced Cardiovascular Systems, Inc. ("ACS") and Guidant Sales Corporation ("Guidant Sales") (hereinafter collectively "ACS/Guidant"), hereby answer the Amended and Supplemental Complaint of Medtronic AVE, Inc. ("Medtronic AVE") and Medtronic USA, Inc. ("Medtronic USA") (hereinafter collectively "Medtronic AVE/USA") in the above-identified action as follows:

ANSWER

1. ACS/Guidant admit that Medtronic AVE/USA purport to bring this action against ACS/Guidant for the alleged causes of action set forth in paragraph 1 of the Amended and Supplemental Complaint, but deny that Medtronic AVE/USA have any cause of action, and deny each and every one of the remaining allegations contained in paragraph 1 of the Amended and Supplemental Complaint.

2. ACS/Guidant admit that Medtronic AVE/USA's patent infringement action purports to involve U.S. Patent No. 5,292,331 ("`331 patent"), U.S. Patent No. 5,674,278 ("`278 patent"), and U.S. Patent No. 5,879,382 ("`382 patent"), each of which relates to balloon expandable stents and has Michael D. Boneau listed as the inventor of record. ACS/Guidant further admit that Medtronic AVE/USA purport to seek damages and a permanent injunction prohibiting ACS/Guidant from manufacturing, using, selling, offering for sale, and importing certain stents in the United States. ACS/Guidant deny that any of their products are infringing. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

3. ACS/Guidant admit that Medtronic AVE/USA purport to seek damages, an assignment of or royalty-free license under certain patents, and a declaration that the enumerated ACS patents are invalid, unenforceable and/or not infringed. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 3 of the Amended and Supplemental Complaint.

4. On information and belief, ACS/Guidant admit that Medtronic AVE sells stent delivery systems abroad and in the United States. ACS/Guidant also admit, on information and belief, that Medtronic AVE has its principal place of business at 3576 Unocal Place, Santa Rosa, California 95052. On information and belief, ACS/Guidant admit that Medtronic USA sells stent delivery systems in the United States. ACS/Guidant also admit, on information and belief, that Medtronic USA has its principal place of business in Minneapolis, Minnesota. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining

allegations contained in paragraph 4 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

5. ACS/Guidant admit that ACS is a corporation organized under the laws of the State of California, and that it has its principal place of business at 3200 Lakeside Drive, Santa Clara, California 95082. ACS/Guidant admit that Guidant Sales is an Indiana Corporation with its principal place of business in Indianapolis, Indiana. ACS/Guidant also admit that they conduct or solicit business and derive revenue from the services related to or the sale of cardiology products within this judicial district, including rapid exchange catheters, over-the-wire catheters, and stents that are covered by ACS-owned patents. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 5 of the Amended and Supplemental Complaint.

6. ACS/Guidant admit that Medtronic AVE/USA purport to base jurisdiction on the statutes cited in paragraph 6 of the Amended and Supplemental Complaint, but deny that jurisdiction over Medtronic AVE/USA's alleged causes of action properly lies with this Court due to the existence of a prior action between ACS/Guidant and Medtronic AVE/USA involving substantially the same issues that was first filed in another federal court. ACS/Guidant admit that Medtronic AVE/USA purport to bring this action under the Patent Laws of the United States, 35 U.S.C. §§ 1 et seq., and under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, but deny that this action properly arises under the Patent Laws or the Declaratory Judgments Act. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 6 of the Amended and Supplemental Complaint.

7. ACS/Guidant admit that Medtronic AVE/USA purport to base venue on the statutes cited in paragraph 7 of the Amended and Supplemental Complaint, but deny that venue is proper in

this judicial district, and deny each and every one of the remaining allegations contained in paragraph 7 of the Amended and Supplemental Complaint.

8. Based upon information and belief, ACS/Guidant admit that U.S. Patent No. 5,292,331 entitled "Endovascular Support Device" ("`331 patent") issued on or about March 8, 1994, naming Michael D. Boneau as inventor, and that a copy of that patent was attached to the Amended and Supplemental Complaint as Exhibit A. ACS/Guidant further admit that the last name of Michael D. Boneau is spelled "Boneau" in the Amended and Supplemental Complaint. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

9. Based upon information and belief, ACS/Guidant admit that U.S. Patent No. 5,674,278 entitled "Endovascular Support Device" ("`278 patent") issued on or about October 7, 1997, naming Michael D. Boneau as inventor, and that a copy of that patent was attached to the Amended and Supplemental Complaint as Exhibit B, but deny each and every one of the remaining allegations contained in paragraph 9 of the Amended and Supplemental Complaint.

10. Based upon information and belief, ACS/Guidant admit that U.S. Patent No. 5,879,382 entitled "Endovascular Support Device And Method" ("`382 patent") issued on or about March 9, 1999, naming Michael D. Boneau as inventor, and that a copy of that patent was attached to the Amended and Supplemental Complaint as Exhibit C, but deny each and every one of the remaining allegations contained in paragraph 10 of the Amended and Supplemental Complaint.

11. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

12. ACS/Guidant admit the allegations contained in paragraph 12 of the Amended and Supplemental Complaint.

13. ACS/Guidant admit that on or about May 7, 1996, U.S. Patent No. 5,514,154, entitled "EXPANDABLE STENTS AND METHOD FOR MAKING SAME" (the "`154 patent"), issued with Lilip Lau, William M. Hartigan, and John J. Frantzen named as co-inventors. ACS/Guidant further admit that U.S. Patent Application No. 08/281,790, which issued as the `154 patent, was designated as a continuation-in-part of U.S. Patent Application No. 08/164,986. This response is not an admission by ACS and/or Guidant Sales as to the priority date(s) of the claims of the `154 patent.

14. ACS/Guidant admit the allegations contained in paragraph 14 of the Amended and Supplemental Complaint.

15. ACS/Guidant admit the allegations contained in paragraph 15 of the Amended and Supplemental Complaint.

16. ACS/Guidant admit the allegations contained in paragraph 16 of the Amended and Supplemental Complaint.

17. ACS/Guidant admit the allegations contained in paragraph 17 of the Amended and Supplemental Complaint.

18. ACS/Guidant admit the allegations contained in paragraph 18 of the Amended and Supplemental Complaint.

19. ACS/Guidant admit the allegations contained in paragraph 19 of the Amended and Supplemental Complaint.

20. ACS/Guidant admit the allegations contained in paragraph 20 of the Amended and Supplemental Complaint.

21. ACS/Guidant admit that the disclosures of the `955, `154, `721, `893, `158, `776, `167, `168, `331, `278, and `382 patents are as set forth in the respective patent documents, the contents of which are a matter of public record, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 21 of the Amended and Supplemental Complaint that relates or refers to said patents. ACS/Guidant further admit, on information and belief, that ACS/Guidant and Medtronic AVE/USA are direct competitors in the field of stents and stent delivery systems; that ACS/Guidant and Medtronic AVE/USA manufacture and/or sell stents and stent delivery systems used in treating coronary artery disease; that arteriosclerosis can include the formation of deposits or plaque in the artery that can inhibit the normal flow of blood through the vessel; that balloon angioplasty can be used to break apart plaque; that there are certain risks inherent in balloon angioplasty treatments; that such risks include abrupt closure of the artery as well as restenosis; that stent delivery systems often include support members known as stents; that many stents are expandable, metallic implants that act as internal support structures for blood vessels; that a stent can be delivered to a stenosed region of an artery by a catheter; and that a catheter can have a balloon end that is inflated to expand the stent into position within the artery. Except as specifically admitted, ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 21 of the Amended and Supplemental Complaint.

22. ACS/Guidant admit that ACS did not have FDA approval to sell the RX MULTI-LINK™ and RX MULTI-LINK™ HP Coronary Stent Systems in the United States until on or about October 2, 1997, when ACS received FDA approval. On information and belief, ACS/Guidant admit Medtronic AVE did not have FDA approval to sell its Micro Stent II and GFX stent delivery systems in the United States until on or about December 23, 1997, when Medtronic AVE received FDA approval. ACS/Guidant further admit that ACS and Medtronic AVE have subsequently marketed additional stent delivery systems. Except as specifically admitted, ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 22 of the Amended and Supplemental Complaint.

23. ACS/Guidant admit that ACS/Guidant currently manufacture, sell, and/or offer to sell coronary stents in the United States; and that ACS/Guidant also currently manufacture, sell, and/or offer to sell other cardiology products, but deny each and every one of the remaining allegations contained in paragraph 23 of the Amended and Supplemental Complaint.

24. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

25. Based upon information and belief, ACS/Guidant admit that the '331 patent issued from U.S. patent application Serial No. 398,180, which purports to have a filing date of August 24, 1989, but deny that said application is the parent of the '278 patent or the '382 patent, and are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 25 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

26. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

27. ACS/Guidant admit that Mr. Boneau and ACS executed a written agreement dated May 22, 1989, entitled "Mutual Confidentiality Agreement," the scope and terms of which are as set forth in the written agreement itself, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 27 of the Amended and Supplemental Complaint that relates to the scope and terms of that agreement. ACS/Guidant also admit that ACS was interested in improving its stent technology for use in conjunction with its balloon catheter technology. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of Medtronic AVE/USA's remaining allegations contained in paragraph 25 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

28. ACS/Guidant admit that Mr. Boneau met with Wilfred Samson, and that Mr. Boneau discussed information regarding a stent design, but deny each and every one of the remaining allegations contained in paragraph 28 of the Amended and Supplemental Complaint.

29. ACS/Guidant admit that Accuterix and ACS executed a written "Nondisclosure Agreement" dated August 21, 1989, the scope and terms of which are as set forth in the written agreement itself, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 29 of the Amended and Supplemental Complaint.

30. ACS/Guidant admit that Mr. Boneau met with Mr. Samson and discussed information regarding a stent design. ACS/Guidant currently are without knowledge or information sufficient to form a belief as to the truth of Medtronic AVE/USA's remaining allegations contained in

paragraph 30 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

31. ACS/Guidant admit that Mr. Boneau and/or Dr. Stertzer met with ACS personnel, including Lilip Lau, Carl Simpson, and Michael Orth, at certain points in time, and discussed information regarding a stent design. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 31 of the Amended and Supplemental Complaint.

32. ACS/Guidant admit that Michael Orth and Lilip Lau evaluated a prototype stent supplied by Mr. Boneau, but deny each and every one of the remaining allegations contained in paragraph 32 of the Amended and Supplemental Complaint.

33. ACS/Guidant admit that ACS informed Mr. Boneau and Dr. Stertzer that it was not interested in developing the stent provided by Mr. Boneau. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 33 of the Amended and Supplemental Complaint

34. ACS/Guidant admit that ACS has filed numerous patent applications for stent designs involving coiled sheets of metal. ACS/Guidant further admit that ACS has filed numerous patent applications for tubular sent designs that do not involve a coiled metal sheet, and that the '955 patent claims priority from a patent application filed in October 1991. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 34 of the Amended and Supplemental Complaint.

35. ACS/Guidant admit that Mr. Lau and Mr. Hartigan have been named as inventors on ACS patents, and that Mr. Lau evaluated a prototype stent supplied by Mr. Boneau, but deny each and every one of the remaining allegations contained in paragraph 35 of the Amended and Supplemental Complaint.

36. ACS/Guidant deny that ACS has engaged in any misconduct, and deny each and every one of the remaining allegations contained in paragraph 36 of the Amended and Supplemental Complaint.

37. ACS/Guidant admit that Mr. Lynch was a partner at the law firm of Fulwider Patton Lee & Utecht in March of 1990, and that Mr. Lynch joined the firm of Crosby, Heafey, Roach & May on or about August 1, 1991. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of Medtronic AVE/USA's remaining allegations contained in paragraph 37 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

38. ACS/Guidant admit that Mr. Lynch, alone or with his colleagues at the Crosby firm and/or the Fulwider firm, prepared or was substantially involved in the preparation of a patent application for ACS entitled "Expandable Stents and Method for Making Same," which was filed on or about October 28, 1991 and was accorded Serial No. 07/783,558. ACS/Guidant deny that the patent application contained information derived from Mr. Boneau or the Boneau Patent Application, or that ACS made any misrepresentation. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 38 of the Amended and Supplemental Complaint.

39. ACS/Guidant admit the allegations contained in paragraph 39 of the Amended and Supplemental Complaint.

40. ACS/Guidant admit that ACS owns the `955 patent, and that the `955 patent claims priority from Serial No. 07/783,558 through a series of continuing applications. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 40 of the Amended and Supplemental Complaint.

41. ACS/Guidant admit that on or about September 17, 1992, ACS revoked earlier powers of attorney in application Serial No. 07/783,558 and appointed certain attorneys at the firm of Fulwider Patton Lee & Utecht, LLP to prosecute and conduct all business in the Patent and Trademark Office connected with the application. ACS/Guidant further admit that certain attorneys at the Fulwider firm have had substantial involvement in the prosecution of application Serial No. 07/783,558 and several continuing applications based thereon, including the applications that led to issuance of the `955 patent, and that the Fulwider firm is identified as the attorneys of record on the issued `955 patent. ACS/Guidant admit that certain attorneys at the Fulwider firm, including John Nagy, prepared and filed amendments to one or more of the applications that led to issuance of the `955 patent. ACS/Guidant further admit that the contents of those amendments are as set forth in the respective documents, the contents of which are a matter of public record, but except as expressly admitted, ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 41 of the Amended and Supplemental Complaint.

42. ACS/Guidant admit that ACS is the assignee of the `955, `154, `721, `893, `158, `776, `167, and `168 patents. ACS/Guidant also admit that ACS has filed foreign patent applications, including European application 0 540 290. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 42 of the Amended and Supplemental Complaint.

43. ACS/Guidant admit that the disclosures and claims of the `955, `154, `721, `893, `158, `776, `167, and `168 patents, as well as European patent application 0 540 290, are as set forth in the respective patent documents, the content of which are a matter of public record, but except as expressly admitted, deny each and every one of the allegations contained in paragraph 43 of the Amended and Supplemental Complaint.

44. ACS/Guidant deny each and every one of the allegations contained in paragraph 44 of the Amended and Supplemental Complaint.

45. ACS/Guidant deny each and every one of the allegations contained in paragraph 45 of the Amended and Supplemental Complaint.

46. ACS/Guidant deny each and every one of the allegations contained in paragraph 46 of the Amended and Supplemental Complaint.

47. ACS/Guidant admit that Michael D. Boneau was not named as a co-inventor in the `955, `154, `721, `893, `158, `776, `167, and `168 patents, and further admit that Lilip Lau, William M. Hartigan, and John J. Frantzen were properly named as the true and sole co-inventors of the `955, `154, `721, `893, `158, `776, `167, and `168 patents. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 47 of the Amended and Supplemental Complaint.

48. ACS/Guidant admit that a Preliminary Amendment which accompanied a request for filing a divisional application Serial No. 214,402 included a claim directed to a kit, and that ACS disclosed at least 89 references to the Examiner, but deny each and every one of the remaining allegations contained in paragraph 48 of the Amended and Supplemental Complaint.

49. ACS/Guidant admit that U.S. Patent Number 3,657,744 to Ersek was cited during the prosecution of the `955 patent, but deny each and every one of the remaining allegations contained in paragraph 49 of the Amended and Supplemental Complaint.

50. ACS/Guidant admit that U.S. patent application Serial Numbers 08/175,214, 08/396,886, and 08/454,599 were co-pending with one or more of the patent applications that led to issuance of the `955, `154, `721, and `893 patents, and that U.S. patent application Serial Number 08/672,729 was co-pending with one or more of the patent applications that led to issuance of the

`154, `721, and `893 patents. ACS/Guidant admit that one or more attorneys at the Fulwider firm were involved in prosecuting the`955, `154, `721, and `893 patents. ACS/Guidant admit that the disclosures of the Application Serial Numbers 08/175,214, 08/396,886, 08/454,599, and 08/672,729 are as set forth in the respective documents, the content of which are a matter of public record, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 50 of the Amended and Supplemental Complaint regarding the content of those disclosures. ACS/Guidant deny that ACS or ACS's attorneys knowingly or with intent to deceive the PTO failed to disclose any material information to the PTO during prosecution of the `955, `154, `721, or `893 patents. ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 50 of the Amended and Supplemental Complaint.

51. ACS/Guidant deny each and every one of the allegations contained in paragraph 51 of the Amended and Supplemental Complaint.

52. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 52 of the Amended and Supplemental Complaint, admit that Medtronic AVE/USA purport to assert a count for infringement of the Boneau `331, `278, and `382 patents under the Patent Laws of the United States, deny that Medtronic AVE/USA have any cause of action, and deny each and every one of the remaining allegations contained in paragraph 52 of the Amended and Supplemental Complaint.

53. ACS/Guidant deny each and every one of the allegations contained in paragraph 53 of the Amended and Supplemental Complaint.

54. ACS/Guidant admit to having manufactured, sold, and offered for sale various stents in the United States, but deny that ACS's stents infringe the `331, `278, or `382 patents, and deny

each and every one of the remaining allegations contained in paragraph 54 of the Amended and Supplemental Complaint.

55. ACS/Guidant admit to becoming aware of the existence of the `331, `278, and `382 patents at some time, and admit that they manufacture, use, sell, and/or offer for sale stents in the United States, but deny that ACS's stents infringe the `331, `278, and/or `382 patents, and deny each and every one of the remaining allegations contained in paragraph 55 of the Amended and Supplemental Complaint.

56. ACS/Guidant deny each and every one of the allegations contained in paragraph 56 of the Amended and Supplemental Complaint.

57. ACS/Guidant deny that ACS/Guidant have infringed the `331, `278, or `382 patents, deny that Medtronic AVE/USA have been or will be damaged in any way, and deny each and every one of the remaining allegations contained in paragraph 57 of the Amended and Supplemental Complaint.

58. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for breach of contract, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 58 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 58 of the Amended and Supplemental Complaint.

59. ACS/Guidant deny each and every one of the allegations contained in paragraph 59 of the Amended and Supplemental Complaint.

60. ACS/Guidant deny that any inventions, discoveries, or developments of ACS have been based upon or derived from any use of information allegedly disclosed by Mr. Boneau, deny that any patents or patent applications of ACS have been based upon or derived from any use of alleged trade secrets or confidential information of Medtronic AVE, deny that ACS has breached any agreements with Mr. Boneau or Accuterix, and deny each and every one of the remaining allegations contained in paragraph 60 of the Amended and Supplemental Complaint.

61. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for misappropriation of trade secrets, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 61 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 61 of the Amended and Supplemental Complaint.

62. ACS/Guidant deny each and every one of the allegations contained in paragraph 62 of the Amended and Supplemental Complaint.

63. ACS/Guidant deny each and every one of the allegations contained in paragraph 63 of the Amended and Supplemental Complaint.

64. ACS/Guidant deny that ACS/Guidant have misappropriated any trade secrets of Medtronic AVE, deny that Medtronic AVE/USA have or will be damaged or suffer loss in any way, and deny each and every one of the remaining allegations contained in paragraph 64 of the Amended and Supplemental Complaint.

65. ACS/Guidant deny that ACS/Guidant have misappropriated any trade secrets of Medtronic AVE, deny that ACS/Guidant have been unjustly enriched, deny that Medtronic

AVE/USA have suffered any losses of any kind, and deny each and every one of the remaining allegations contained in paragraph 65 of the Amended and Supplemental Complaint.

66. ACS/Guidant deny that ACS/Guidant have misappropriated any trade secrets of Medtronic AVE, deny that ACS/Guidant have been unjustly enriched, deny that Medtronic AVE/USA have suffered any losses of any kind, and deny each and every one of the remaining allegations contained in paragraph 66 of the Amended and Supplemental Complaint.

67. ACS/Guidant deny that ACS/Guidant have misappropriated any trade secrets of Medtronic AVE, and deny each and every one of the remaining allegations contained in paragraph 67 of the Amended and Supplemental Complaint.

68. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for actual fraud, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 68 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 68 of the Amended and Supplemental Complaint.

69. ACS/Guidant deny each and every one of the allegations contained in paragraph 69 of the Amended and Supplemental Complaint.

70. ACS/Guidant deny each and every one of the allegations contained in paragraph 70 of the Amended and Supplemental Complaint.

71. ACS/Guidant deny having made any misrepresentations, and deny each and every one of the remaining allegations contained in paragraph 71 of the Amended and Supplemental Complaint.

72. ACS/Guidant admit that Mr. Boneau and/or Dr. Stertzer met with ACS representatives and disclosed and discussed stent technology, including prototype development, the results of initial use and testing of stents, and information about a draft patent application of Mr. Boneau. ACS/Guidant deny having made any misrepresentations, and deny each and every one of the remaining allegations contained in paragraph 72 of the Amended and Supplemental Complaint.

73. ACS/Guidant admit that ACS received samples of stent designs from Mr. Boneau for testing, and that Mr. Boneau and ACS executed a written agreement dated May 22, 1989, entitled "Mutual Confidentiality Agreement," the scope and terms of which are as set forth in the written agreement itself, and that Accuterix and ACS executed a written "Nondisclosure Agreement" dated August 21, 1989, the scope and terms of which are as set forth in the written agreement itself. ACS/Guidant deny having made any misrepresentations, and deny each and every one of the remaining allegations contained in paragraph 73 of the Amended and Supplemental Complaint.

74. ACS/Guidant deny each and every one of the allegations contained in paragraph 74 of the Amended and Supplemental Complaint.

75. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for unjust enrichment, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 75 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 75 of the Amended and Supplemental Complaint.

76. ACS/Guidant deny each and every one of the allegations contained in paragraph 76 of the Amended and Supplemental Complaint.

77. ACS/Guidant deny each and every one of the allegations contained in paragraph 77 of the Amended and Supplemental Complaint.

78. ACS/Guidant deny each and every one of the allegations contained in paragraph 78 of the Amended and Supplemental Complaint.

79. ACS/Guidant deny each and every one of the allegations contained in paragraph 79 of the Amended and Supplemental Complaint.

80. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for breach of fiduciary duty, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 80 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 80 of the Amended and Supplemental Complaint.

81. ACS/Guidant admit that Mr. Boneau and ACS executed a written agreement entitled "Mutual Confidentiality Agreement," the scope and terms of which are as set forth in the written agreement itself. ACS/Guidant further admit that Accuterix and ACS executed a written "Nondisclosure Agreement" dated August 21, 1989, the scope and terms of which are as set forth in the written agreement itself. Except as expressly admitted, ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 81 of the Amended and Supplemental Complaint.

82. ACS/Guidant deny each and every one of the allegations contained in paragraph 82 of the Amended and Supplemental Complaint.

83. ACS/Guidant deny each and every one of the allegations contained in paragraph 83 of the Amended and Supplemental Complaint.

84. ACS/Guidant deny each and every one of the allegations contained in paragraph 84 of the Amended and Supplemental Complaint.

85. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for unfair competition, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 85 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 85 of the Amended and Supplemental Complaint.

86. ACS/Guidant deny each and every one of the allegations contained in paragraph 86 of the Amended and Supplemental Complaint.

87. ACS/Guidant deny that ACS/Guidant has engaged in any unfair competition, deny that Medtronic AVE/USA have been injured in any way, and deny each and every one of the remaining allegations contained in paragraph 87 of the Amended and Supplemental Complaint.

88. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for "restoration of property wrongfully acquired," but deny that Medtronic AVE/USA have any cause of action, and deny that any such cause of action exists under applicable law. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 88 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 88 of the Amended and Supplemental Complaint.

89. ACS/Guidant deny each and every one of the allegations contained in paragraph 89 of the Amended and Supplemental Complaint.

90. ACS/Guidant admit that Mr. Boneau and ACS executed a written agreement dated May 22, 1989, entitled "Mutual Confidentiality Agreement," the scope and terms of which are set forth in the written agreement itself, and admit that Accuterix and ACS executed a written "Nondisclosure Agreement" dated August 21, 1989, the scope and terms of which are set forth in the written agreement itself, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 90 of the Amended and Supplemental Complaint.

91. ACS/Guidant deny that the stent designs contained in any ACS patent were derived from or based upon any misappropriated trade secrets or confidential information of Medtronic, and deny each and every one of the remaining allegations contained in paragraph 91 of the Amended and Supplemental Complaint.

92. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for conversion, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 92 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 92 of the Amended and Supplemental Complaint.

93. ACS/Guidant deny each and every one of the allegations contained in paragraph 93 of the Amended and Supplemental Complaint.

94. ACS/Guidant admit that Mr. Boneau and ACS executed a written agreement dated May 22, 1989, entitled "Mutual Confidentiality Agreement," the scope and terms of which are set forth in the written agreement itself, and admit that Accuterix and ACS executed a written

"Nondisclosure Agreement" dated August 21, 1989, the scope and terms of which are set forth in the written agreement itself, but except as expressly admitted, deny each and every one of the remaining allegations contained in paragraph 94 of the Amended and Supplemental Complaint.

95. ACS/Guidant deny each and every one of the allegations contained in paragraph 95 of the Amended and Supplemental Complaint.

96. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for declaratory relief, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 96 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 96 of the Amended and Supplemental Complaint.

97. ACS/Guidant admit that they assert that Medtronic AVE/USA's manufacture, use, offering for sale, and/or sale of Medtronic AVE's Accused Products for implantation into human vessels infringes or will infringe the `955, `154, `721, `893, `776, `167, and `168 patents. ACS/Guidant further admit that, on December 24, 1997 (which, upon information and belief, is one day after Medtronic AVE received FDA approval to market its MicroStent II and GFX stent products in the U.S.), ACS filed a Complaint for Patent Infringement against Medtronic AVE in the Northern District of California entitled, Advanced Cardiovascular Systems, Inc. v. Arterial Vascular Engineering, Inc., Civil Action No. 97-21147 JW (PVT), in which ACS alleged that Medtronic AVE has infringed and will continue to infringe the `955, `154, and `721 patents by making, using, offering for sale, and/or selling stents for implantation into human vessels, including the Microstent II and GFX stent delivery systems. ACS/Guidant admit that the action was transferred to this Court

pursuant to 28 U.S.C. § 1404(a), with the transferring judge not finding any defect in the original Complaint or its filing but instead specifically holding that the action was being transferred "to conserve judicial resources and to avoid production of cumulative witnesses and documents." ACS/Guidant deny that the Complaint was in any way defective, or that it was filed preemptively. ACS/Guidant admit that Medtronic AVE/USA deny that they are infringing the `955, `154, and `721 patents, but ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 97 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

98. ACS/Guidant admit that, on April 10, 1998, ACS filed a Complaint for Patent Infringement against Medtronic AVE in the Northern District of California entitled, Advanced Cardiovascular Systems, Inc. v. Arterial Vascular Engineering, Inc., Civil Action No. 98-1481 JW (PVT), in which ACS alleged that Medtronic AVE has infringed and will continue to infringe the `893 patent by making, using, offering for sale, and/or selling stents for implantation into human vessels, including the Microstent II and GFX stent delivery systems. ACS/Guidant admit that the action was transferred to this Court pursuant to 28 U.S.C. § 1404(a), with the transferring judge not finding any defect in the original Complaint or its filing but instead specifically holding that the action was being transferred "to conserve judicial resources and to avoid production of cumulative witnesses and documents." ACS/Guidant deny that the Complaint was in any way defective. ACS/Guidant admit that Medtronic AVE/USA deny that they are infringing the `893 patent, but ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 98 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

99. ACS/Guidant admit that ACS/Guidant have amended the pleadings in this action to allege that Medtronic AVE/USA have infringed and are infringing the `776, `167, and `168 patents by making, using, offering for sale, and/or selling stents for implantation into human vessels, including the Medtronic Accused Products. ACS/Guidant admit that Medtronic AVE/USA deny that they are infringing the `776, `167, or `168 patents, but ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 99 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

100. ACS/Guidant admit that Medtronic AVE/USA deny that they are infringing the `955, `154, `721, `893, `776, `167, or `168 patents, but ACS/Guidant deny each and every one of the remaining allegations contained in paragraph 100 of the Amended and Supplemental Complaint.

101. ACS/Guidant deny each and every one of the allegations contained in paragraph 101 of the Amended and Supplemental Complaint.

102. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation of paragraphs 1-101 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 102 of the Amended and Supplemental Complaint.

103. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in paragraphs 1-102 of the Amended and Supplemental Complaint, admit that the `154, `721, `893, `776, `167, and `168 patents are related to the `955 patent, but deny each and every one of the remaining allegations contained in paragraph 103 of the Amended and Supplemental Complaint.

104. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in paragraphs 1-103 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 104 of the Amended and Supplemental Complaint.

105. ACS/Guidant deny each and every one of the allegations contained in paragraph 105 of the Amended and Supplemental Complaint.

106. ACS/Guidant deny each and every one of the allegations contained in paragraph 106 of the Amended and Supplemental Complaint.

107. ACS/Guidant deny each and every one of the allegations contained in paragraph 107 of the Amended and Supplemental Complaint.

108. ACS/Guidant are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 108 of the Amended and Supplemental Complaint, and therefore deny each and every one of those allegations.

109. ACS/Guidant admit that Medtronic AVE/USA purport to state a count for equitable claims, but deny that Medtronic AVE/USA have any cause of action. ACS/Guidant incorporate by reference their answers, set forth above, to each allegation in each paragraph incorporated by reference in paragraph 109 of the Amended and Supplemental Complaint, and deny each and every one of the remaining allegations contained in paragraph 109 of the Amended and Supplemental Complaint.

110. ACS/Guidant deny each and every one of the allegations contained in paragraph 110 of the Amended and Supplemental Complaint.

111. ACS/Guidant deny each and every one of the allegations contained in paragraph 111 of the Amended and Supplemental Complaint.

AFFIRMATIVE DEFENSES

Affirmative Defenses Applicable to All Counts

112. This Court should refuse to exercise jurisdiction over Medtronic AVE/USA's Amended and Supplemental Complaint against ACS/Guidant by reason of the doctrine of federal comity and the "first-to-file" rule because ACS filed a prior action against Medtronic AVE in another federal court which involves substantially the same or similar issues.

113. Medtronic AVE/USA's purported claims should be dismissed on the grounds that they are compulsory counterclaims to a prior pending action between ACS/Guidant and Medtronic AVE.

114. Medtronic AVE/USA are barred by equitable estoppel and the election of remedies doctrine from seeking multiple, inconsistent claims and remedies for the same alleged acts of ACS.

115. Medtronic AVE/USA lack standing to maintain their purported causes of action.

116. Medtronic AVE/USA's purported causes of action should be dismissed for failure to join indispensable and necessary parties.

117. Medtronic AVE/USA are barred from bringing this action against ACS/Guidant and/or are barred from any recovery from ACS/Guidant for alleged infringement of the '331, '278, and '382 patents, alleged breach of contract, alleged trade secret misappropriation, alleged fraud, alleged unjust enrichment, alleged breach of fiduciary duty, alleged unfair competition, alleged wrongful acquisition of property, or alleged conversion by a 1992 Agreement and/or by a 1998

Agreement, originally between Bard and ACS, as to which Medtronic AVE is the assignee and/or successor; if Medtronic AVE/USA dispute such fact, they are required to arbitrate such dispute under the terms of said agreement(s).

Additional Affirmative Defenses Applicable to Count 1: Patent Infringement

118. ACS/Guidant have not infringed and are not infringing, actively inducing others to infringe, or contributing to the infringement of the claims of the `331, `278, or `382 patent under any theory of literal infringement or infringement under the doctrine of equivalents.

119. By reason of the state of the prior art, and proceedings in the U.S. Patent and Trademark Office ("USPTO") during prosecution of the applications which resulted in the issuance of the `331, `278, and `382 patents, including the amendments of claims and arguments and other statements made during the prosecution by or on behalf of the patentee, Medtronic AVE/USA are estopped to assert that ACS/Guidant have infringed or are infringing the `331, `278, and `382 patents.

120. The `331, `278, and `382 patents are all invalid for failure to comply with the requirements of Part 2 of Title 35 of the United States Code including, inter alia, the requirements of 35 U.S.C. §§ 102, 103, 112, and 256.

121. The `278 and `382 patents are invalid under the doctrine of double patenting.

122. The `331 patent is unenforceable by reason of acts, omissions, and misrepresentations amounting to inequitable conduct during prosecution of the application that resulted in the issuance of the `331 patent. Although certain bases for these contentions are set forth herein, ACS/Guidant believe that additional bases will be developed during discovery. On information and belief, Boneau and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney

prosecuting the application resulting in the issuance of the `331 patent, made material misrepresentations and/or failed to disclose material information to the USPTO, with the intent to deceive the USPTO, at the time of filing and/or during the prosecution of the application that led to the issuance of the `331 patent, including: (i) misrepresenting the testing and usefulness of a device described in the `331 patent; (ii) misrepresenting the identity of the `331 patent's true inventors by failing to identify Rodolfo Di Massa or Benito Hidalgo as inventors, and by naming Boneau as the sole inventor; and (iii) failing to disclose the best mode for carrying out the invention. On information and belief, Boneau and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney prosecuting the application resulting in the issuance of the `331 patent, were aware of relevant and material information which was not identified to the USPTO at the time of filing or during the prosecution of the application that led to the issuance of the `331 patent, and failed to satisfy their uncompromising duty of candor to the USPTO under the Code of Federal Regulations, 37 C.F.R. § 1.56 by failing to disclose such information, including U.S. Patent No. 4,830,003 to Wolff et al., U.S. Patent No. 4,969,458 to Wiktor, European Patent Application 0177330, and an article entitled "Percutaneous Endovascular Stents: An Experimental Evaluation" (Wright et al., Radiology 1985; 156:69-72), each of which was known, at the time of filing or during prosecution of the application, to Boneau and/or his assignee and subsequent licensees and assignees and/or the attorney prosecuting the application.

123. The `278 patent is unenforceable by reason of acts, omissions, and misrepresentations amounting to inequitable conduct during prosecution of the application that resulted in the issuance of the `278 patent. Although certain bases for these contentions are set forth herein, ACS/Guidant believe that additional bases will be developed during discovery. On information and belief, Boneau

and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney prosecuting the application resulting in the issuance of the `278 patent, made material misrepresentations and/or failed to disclose material information to the USPTO, with the intent to deceive the USPTO, at the time of filing and/or during the prosecution of the applications that led to the issuance of the `278 patent, including: (i) misrepresenting the testing and usefulness of a device described in the `278 patent; (ii) misrepresenting the identity of the `278 patent's true inventors by failing to identify Rodolfo Di Massa or Benito Hidalgo as inventors, and by naming Boneau as the sole inventor; and (iii) failing to disclose the best mode for carrying out the invention. On information and belief, Boneau and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney prosecuting the applications resulting in the issuance of the `278 patent, failed to satisfy their uncompromising duty of candor to the USPTO under the Code of Federal Regulations, 37 C.F.R. § 1.56 by misrepresenting and failing to disclose material information to the USPTO, including: (i) misrepresenting the disclosure of U.S. Patent No. 4,580,568 issued to Gianturco and concealing information concerning the properties of stents made and used in accordance with the teachings of Gianturco; (ii) failing to disclose and concealing arguments made by experts hired by and acting on behalf of subsequent licensees and assignees and/or other parties acting in concert with said subsequent licensees and assignees concerning the state of the prior art and teachings of known prior art references, including Gianturco; and (iii) failing to disclose known prior art references, including U.S. Patent No. 4,969,458 to Wiktor, U.S. Patent No. 4,856,516 to Hillstead, European Patent Application 0177330, and an article entitled "Percutaneous Endovascular Stents: An Experimental Evaluation" (Wright et al., Radiology 1985; 156:69-72), each of which was

known, at the time of filing or during prosecution of the application, to Boneau and/or his assignee and subsequent licensees and assignees and/or the attorney prosecuting the applications.

124. The `382 patent is unenforceable by reason of acts, omissions, and misrepresentations amounting to inequitable conduct during prosecution of the application that resulted in the issuance of the `382 patent. Although certain bases for these contentions are set forth herein, ACS/Guidant believe that additional bases will be developed during discovery. On information and belief, Boneau and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney prosecuting the application resulting in the issuance of the `382 patent, made material misrepresentations and/or failed to disclose material information to the USPTO, with the intent to deceive the USPTO, at the time of filing and/or during the prosecution of the applications that led to the issuance of the `382 patent, including: (i) misrepresenting the testing and usefulness of a device described in the `382 patent; (ii) misrepresenting the identity of the `382 patent's true inventors by failing to identify Rodolfo Di Massa or Benito Hidalgo as inventors, and by naming Boneau as the sole inventor; and (iii) failing to disclose the best mode for carrying out the invention. On information and belief, Boneau and/or his assignee Accuterix and subsequent licensees and assignees, and/or the attorney prosecuting the applications resulting in the issuance of the `382 patent, failed to satisfy their uncompromising duty of candor to the USPTO under the Code of Federal Regulations, 37 C.F.R. § 1.56 by misrepresenting and failing to disclose material information, including: (i) misrepresenting the disclosure of U.S. Patent No. 4,580,568 issued to Gianturco and concealing information concerning the properties of stents made and used in accordance with the teachings of Gianturco; (ii) failing to disclose and concealing arguments made by experts hired by and acting on behalf of subsequent licensees and assignees and/or other parties

acting in concert with said subsequent licensee and assignees concerning the state of the prior art and teachings of known prior art references, including Gianturco; and (iii) failing to disclose known prior art references, including U.S. Patent No. 4,856,516 to Hillstead and European Patent Application 0177330, each of which was known, at the time of filing or during prosecution of the application, to Boneau and/or his assignee and subsequent licensees and assignees and/or the attorney prosecuting the applications.

125. Medtronic AVE/USA are barred by the equitable defense of unclean hands from any recovery for alleged infringement by ACS/Guidant of the '331, '278, and '382 patents.

126. Medtronic AVE/USA are barred, in whole or in part, from recovery for alleged infringement by ACS/Guidant by reason of Medtronic AVE/USA's failure to comply with the requirements of 35 U.S.C. § 287.

127. For having brought the action, Medtronic AVE/USA are liable to ACS/Guidant under 35 U.S.C. § 285.

Additional Affirmative Defenses to Count 2: Breach of Contract

128. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

129. Medtronic AVE/USA are barred from asserting any claim for alleged breach of contract by the statute of limitations.

130. Medtronic AVE/USA are barred by the equitable defenses of laches and unclean hands from any recovery for alleged breach of contract.

131. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

132. Medtronic AVE/USA are barred from any recovery for alleged breach of contract by its failure to identify with specificity either the contract, the alleged confidential information, or the dates and details of the alleged wrongful acts.

133. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 3: Trade Secret Misappropriation

134. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

135. Medtronic AVE/USA are barred from asserting any claim for alleged trade secret misappropriation by the statute of limitations.

136. Medtronic AVE/USA are barred from any recovery for alleged trade secret misappropriation by the equitable defenses of laches and unclean hands.

137. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

138. Medtronic AVE/USA are barred from any recovery for alleged trade secret misappropriation by its failure to identify with specificity the trade secrets allegedly misappropriated.

139. Medtronic AVE/USA are barred from any recovery for alleged trade secret misappropriation by its failure to identify with specificity appropriate steps taken by Medtronic AVE/USA to maintain the secrecy of the alleged trade secrets.

140. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

141. Because Medtronic AVE/USA brought and maintained this claim against ACS/Guidant in bad faith, ACS/Guidant are entitled to reasonable attorneys' fees.

Additional Affirmative Defenses to Count 4: Actual Fraud

142. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

143. Medtronic AVE/USA are barred from asserting any claim for alleged fraud by the statute of limitations.

144. Medtronic AVE/USA are barred from any recovery for alleged fraud by the equitable defenses of laches and unclean hands.

145. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

146. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 5: Unjust Enrichment

147. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

148. Medtronic AVE/USA are barred from asserting any claim for alleged unjust enrichment by the statute of limitations.

149. Medtronic AVE/USA are barred from any recovery for alleged unjust enrichment by the equitable defenses of laches and unclean hands.

150. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

151. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 4: Breach of Fiduciary Duty

152. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

153. Medtronic AVE/USA are barred from asserting any claim for alleged breach of fiduciary duty by the statute of limitations.

154. Medtronic AVE/USA are barred from any recovery for alleged breach of fiduciary duty by the equitable defenses of laches and unclean hands.

155. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

156. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 7: Unfair Competition

157. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

158. Medtronic AVE/USA are barred from asserting any claim for alleged unfair competition by the statute of limitations.

159. Medtronic AVE/USA are barred from any recovery for alleged unfair competition by the equitable defenses of laches and unclean hands.

160. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

161. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 8: Restoration of Property Wrongfully Acquired

162. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

163. Medtronic AVE/USA's purported claim is barred by the statute of limitations.

164. Medtronic AVE/USA are barred from any recovery by the equitable defenses of laches and unclean hands.

165. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

166. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 9: Conversion

167. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

168. Medtronic AVE/USA are barred from asserting any claim for alleged conversion by the statute of limitations.

169. Medtronic AVE/USA are barred from any recovery for alleged conversion by the equitable defenses of laches and unclean hands.

170. Medtronic AVE/USA's purported claim is barred by the doctrine of equitable estoppel.

171. Medtronic AVE/USA's purported claim is barred, in whole or in part, by the doctrine of federal preemption.

Additional Affirmative Defenses to Count 10: Declaratory Relief

172. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

173. The `955, `154, `721, `893, `776, `167, and `168 patents, and each of them, are valid and enforceable, and Medtronic AVE/USA have been and are infringing, inducing infringement, and contributing to the infringement of each of them.

174. Medtronic AVE/USA are barred from any declaratory relief by the equitable defenses of laches and unclean hands.

175. Medtronic AVE/USA lack standing to request a decree under 35 U.S.C. § 256 or an order imposing a constructive trust in favor of Medtronic AVE/USA or requiring ACS/Guidant to assign its patents or patent applications to Medtronic AVE/USA.

176. Medtronic AVE/USA are estopped to assert that the '955, '154, '721, '893, '776, '167, and '168 patents are unenforceable under the doctrine of inequitable conduct by reason of ACS's alleged failure to disclose the "Boneau Application" to the PTO.

177. Medtronic AVE/USA's claims are barred because they have willfully infringed ACS's patents and comes to the Court with unclean hands.

Additional Affirmative Defenses to Count 11: Equitable Claims

178. Medtronic AVE/USA fail to state a claim upon which relief can be granted.

179. Medtronic AVE/USA's purported claims are barred by the statute of limitations.

180. Medtronic AVE/USA are barred from any recovery by the equitable defenses of laches and unclean hands.

181. Medtronic AVE/USA's purported claims are barred by the doctrine of equitable estoppel.

182. Medtronic AVE/USA's purported claims are barred, in whole or in part, by the doctrine of federal preemption.

COUNTERCLAIMS

By way of counterclaim against Plaintiffs Medtronic AVE and Medtronic USA, Defendants ACS and Guidant Sales allege as follows:

1. This counterclaim arises under the Federal Declaratory Judgment Act and the Patent Laws of the United States, and more particularly under Title 28 U.S.C. §§ 2201 and 2202 and Title 35 U.S.C. § 100, et seq., respectively. Jurisdiction is based on Title 28 U.S.C. §§ 1338 and 2201.

2. Medtronic AVE alleges that it is a Delaware corporation having its principal place of business at 3576 Unocal Place, Santa Rosa, California 95403. Medtronic USA alleges that it is a Minnesota corporation having a principal place of business at Minneapolis, Minnesota.

3. ACS is a California corporation having its principal place of business at 3200 Lakeside Drive, Santa Clara, California 95052. Guidant Sales is an Indiana Corporation with its principal place of business in Indianapolis, Indiana.

4. Medtronic AVE/USA have charged ACS/Guidant with infringement of U.S. Patent No. 5,292,331, U.S. Patent No. 5,674,278, and U.S. Patent No. 5,879,382, and have filed a count in this suit against ACS/Guidant in this Court for the alleged infringement.

5. ACS/Guidant allege that U.S. Patent 5,292,331 and the claims thereof are invalid, void, and unenforceable, and that ACS/Guidant have not infringed and are not infringing any of said claims. As part of this allegation, ACS/Guidant repeat and re-allege and incorporate herein by reference each of the allegations set forth in paragraphs 112-182 of the Amended Answer and paragraphs 1-4 of the Counterclaim set forth above.

6. ACS/Guidant allege that U.S. Patent No. 5,674,278 and the claims thereof are invalid, void, and unenforceable, and that ACS/Guidant have not infringed and are not infringing any of said claims. As part of this allegation, ACS/Guidant repeat and re-allege and incorporate herein by reference, each of the allegations set forth in paragraphs 112-182 of the Amended Answer and paragraphs 1-5 of the Counterclaim as set forth above.

7. ACS/Guidant allege that U.S. Patent No. 5,879,382 and the claims thereof are invalid, void, and unenforceable, and that ACS/Guidant have not infringed and are not infringing any of said claims. As part of this allegation, ACS/Guidant repeat and re-allege and incorporate herein by reference, each of the allegations set forth in paragraphs 112-182 of the Amended Answer and paragraphs 1-6 of the Counterclaim as set forth above.

PRAYER

WHEREFORE, ACS/Guidant pray for an adjudication against Medtronic AVE/USA as follows:

A. That Medtronic AVE/USA take nothing by reason of their Amended and Supplemental Complaint and that all counts of the same be dismissed with prejudice;

B. That ACS/Guidant be declared not to have and not to be infringing, inducing infringement, or contributing to the infringement of the `331, `278, and `382 patents;

C. That the `331, `278, and `382 patents be declared invalid and unenforceable;

D. That the `955, `154, `721, `893, `776, `167, and `168 patents be declared not invalid and not unenforceable;

E. That Medtronic AVE/USA be declared to have been and be infringing, inducing infringement, and contributing to the infringement of the `955, `154, `721, `893, `776, `167, and `168 patents, and that Medtronic AVE/USA's infringement of the `955, `154, `721, `893, `776, `167, and `168 patents was and is willful;

F. That this case be declared exceptional under 35 U.S.C. § 285, and that ACS/Guidant be awarded its reasonable attorneys' fees and expenses of litigation;

G. That ACS/Guidant be awarded costs of this suit; and

H. That ACS/Guidant be awarded such other and further relief as this Court shall deem just and proper.

Frederick L. Cottrell, III (#2555)
Jeffrey L. Moyer (#3309)
RICHARDS, LAYTON & FINGER
One Rodney Square
P.O. Box 551
Wilmington, DE 19899
(302) 651-7509
Attorneys for Defendant
Advanced Cardiovascular Systems, Inc.

OF COUNSEL:

Richard A. Bardin
Craig B. Bailey
Michael S. Elkind
Richard B. Cates
FULWIDER PATTON LEE & UTECHT, LLP
Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, California 90045
(310) 824-5555

Aldo A. Badini
Henry J. Ricardo
DEWEY BALLANTINE LLP
1301 Avenue of the Americas
New York, New York 10019-6902
(212) 259-8000

Dated: November 9, 2000